

SERVICE DATE – JULY 19, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND MODIFICATION OF NOTICE OF INTERIM TRAIL USE OR  
ABANDONMENT

Docket No. AB 6 (Sub-No. 478X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN CASS COUNTY, N.D.

Decided: July 18, 2013

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 7.40 miles of rail line extending between milepost 68.10 at Arthur and milepost 75.50 at Hunter, in Cass County, N.D. Notice of the exemption was served and published in the Federal Register on November 22, 2011 (76 Fed. Reg. 72,241).

By decision and notice of interim trail use or abandonment (NITU) served December 19, 2011, the proceeding was reopened and a 180-day period was authorized for the City of Arthur Park Board and the City of Hunter Park Board (the Cities) jointly to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).<sup>1</sup> The trail use negotiation period under the NITU was extended several times, with the decision served on March 27, 2013, extending the negotiation period until June 11, 2013.

In a letter filed on June 18, 2013, the Cities gave notice to the Board that the parties have recently decided to continue interim trail use/rail banking negotiations for only the portion of the 7.40-mile line located between milepost 68.10 and milepost 74.91, a distance of 6.81 miles. The Cities request that the Board modify the NITU and issue a replacement to apply only to that portion of the right-of-way. In addition, the Cities request an extension of time of the negotiation period for 180 days from June 11, 2013, to December 8, 2013. In a response filed on June 18, 2013, BNSF states that it does not object to issuance of a replacement NITU for the 6.81-mile portion, and in a response filed on July 9, 2013, BNSF states that it does not object to the extension request. BNSF may fully abandon the remaining portion of the line between milepost 74.91 and 75.50, and must notify the Board of the date of consummation.<sup>2</sup>

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<sup>1</sup> That decision also imposed a public use condition that expired on June 19, 2012, and two environmental consultation conditions regarding salvage that remain in effect.

<sup>2</sup> BNSF is reminded that it has 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier (here, the NITU) to consummate the abandonment of the portion of the line between milepost 74.91 and 75.50. 49 C.F.R. § 1152.29(e)(2).

The Cities have complied with the requirements of 49 C.F.R. § 1152.29(d)(2) regarding a request to modify a NITU for a portion of the right-of-way. Therefore, this proceeding will be reopened and a replacement NITU will be issued.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations for a portion of the line, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>3</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the negotiation period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the negotiating period for the portion of the line between milepost 68.10 and milepost 74.91 will be extended for 180 days from June 11, 2013, until December 8, 2013. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012).

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served in this proceeding on December 19, 2011, is vacated.
3. A replacement NITU applicable to the Cities for the portion of the line between milepost 68.10 and milepost 74.91 is issued.
4. The request by the Cities for a 180-day NITU negotiating period is granted.
5. The negotiating period is extended from June 11, 2013, to December 8, 2013. BNSF may fully abandon the remaining portion of the line between milepost 74.91 and 75.50.
6. If an agreement for interim trail use/rail banking is reached for the portion of the line between milepost 68.10 and milepost 74.91, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R § 1152.29(d)(2) and (h).

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<sup>3</sup> See Rail Abans.-Use of Rights-of-Way as Trails-Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

7. This decision and notice is effective on its date of service.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.